contempt, "have really tended to bring the doctrine in itself into contempt."

These are decisions of the greatest weight and authority and establish that the jurisdiction which this court possesses to punish for criminal contempt should only be exercised when the risk of interference with the proper administration of justice is a real and grave one.

Counsel for the applicant informed the court that these proceedings have been brought to restrain the Government from making public statements prejudicial to persons under arrest. He stated that the Minister of the Interior was in the habit of making or issuing such statements, and he cited the case of *Re application of Foong Jam Keong* (19) as another instance where according to him statements prejudicial to accused persons were made in respect of an incident in which the police used firearms and some persons were shot. I understood him to say that the present proceedings were in the nature of a test case and the object was to put a stop to such statements.

In my opinion, to suggest that the Government should not give information to the public by radio and television on matters of great public interest relating to the maintenance of law and order is simply to demand the abandonment by the Government of their duty and the surrender of their authority. To grant a committal order in these proceedings and thereby restrain the publication of similar statements in future would be simply in effect to make an order that while those who defy law and order are to be at liberty to do and say whatever they think fit in pursuit of their political purpose, no voice is to be raised on behalf of the vast majority of the community who believe their most valued interests to be menaced and assailed. In *Re application of Foong Jam Keong* Chua J., in dealing with a ministerial statement made in respect of the incident referred to by counsel for the applicant, observed:—

> "Now all these acts of lawlessness were certainly matters of grave public interest and concern and the Government owed a high duty to the public to keep it informed."

I respectfully agree with these views. In my judgment, the two statements with which we are concerned in these proceedings were made by the first respondent in the faithful discharge of the high duty to keep the public informed, especially in the context of the circumstances prevailing in Singapore, lest evil-doers twist the facts and distort the real truth for their own nefarious and and evil ends.

Of course, it does not follow that a statement made or issued by a Government Minister can never constitute contempt of court, or that a Government Minister should never be punished for contempt of court. A Minister of the Government is not above the law and if a statement made by him is calculated to prejudice the fair trial of an accused person, and if the risk of interference with the proper administration of justice is a real and grave one, such a contempt will be met with the necessary punishment in order to restrain such conduct. But in considering ministerial statements made in the discharge of a public duty, the court must be very cautious that it does not by its act interfere unnecessarily with and abridge the right of the Government to comment on matters so largely involving the public interest. Although it is obvious that a ministerial statement relating to incidents involving defiance of law and order may sometimes give rise to complaints of alleged prejudice to an accused person awaiting trial, the court, in my opinion, should not lightly interfere with the Government's right to make such statements, unless of course it is satisfied that under cover and pretence of comment on a matter of public importance, it was intended to prejudice the course of justice in a pending trial.

For the above reasons the motion is dismissed with costs.

Motion dismissed.

LIM YAN HUA v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) March 28, 1967]

[Sibu — Criminal Appeal No. 2 of 1967]

Criminal Law and Procedure — Charge — Duty of magistrate before reading it to accused.

Criminal Law and Procedure — Charge — Duplicity — Irregularity — No failure of justice.

It is the duty of every magistrate to study the charge before it is read to an accused person. He must see whether the wording of the charge is grammatically correct or not. Also he must watch the punctuation.

In this case as there was nothing to indicate that the appellant did not know for what offence he was charged in court and no objection was taken as to the charge at the trial, even if there was any irregularity it was curable under section 331 of the Criminal Procedure Code (Sarawak Cap. 58) as such irregularity had not occasioned a failure of justice.

Cases referred to:—

(1) *Public Prosecutor* v. *Leong Yoon Meow* [1953] M.L.J. xxxv.

(2) *Public Prosecutor* v. *Syed Bakri* [1955] M.L.J. xxii.

(3) *Lee Chin Kee* v. *Public Prosecutor* [1935] M.L.J. 157.

(4) *Taylor* v. *Goodwin* 4 Q.B.D. 228.

MAGISTRATE'S CRIMINAL APPEAL.

Chew Peng Cheng for the appellant.

C. J. Millar (Deputy Public Prosecutor) for the respondent.

Lee Hun Hoe J.: I dismissed the appeal and stated that I would give my reasons. I now do so.

On 14th September, 1966 appellant was charged in the Sibu Petty Court as follows:—

"That you, on or about the 13th day of September, 1966 at about 1055 hours, at Race Course Road, Sibu. Where a traffic sign to wit, STOP AT MAJOR ROAD AHEAD being a sign for regulation the movement of traffic and of prescribed size, colour and type, had been lawfully placed near the said road. While driving or propelling a vehicle, to wit, a car bearing plate No. S. 3032 did fail to conform to the indication implied by such sign and thereby committed an offence punishable under section 42(1)(b) of the Road Traffic Ordinance."

He was convicted on 12th November 1966 and fined $40 or ten days' imprisonment in default. His appeal to the District Court was dismissed. He appealed to this court on two grounds.

The first ground is that the charge is bad for duplicity. This ground was also before the learned stipendiary magistrate. The second ground is that the learned stipendiary magistrate was wrong in holding that the trial magistrate's reason for disbelieving the appellant's explanation and convicting appellant was reasonable.

Before I go into the grounds of appeal I would like to make these observations. It is the duty of every magistrate to study the charge before it is read to an accused person. He must see whether the wording of the charge is grammatically correct or not. Also he must watch the punctuation. Here is a classic example of a charge rendered meaningless by wrong punctuation. Clearly there should not be any full stop after "Race Course Road, Sibu". Nor should there be a full stop after "the said road". I would invite magistrates and police officers to study the observations made by Thomson J. (as he then was) concerning the framing of a charge in *Public Prosecutor* v. *Leong Yoon Mecw* [1] and *Public Prosecutor* v. *Syed Bakri*.[2]

I now come to the first charge. Appellant argued that the charge was bad for duplicity because of the phrase "driving or propelling". Reference was made to the case of *Lee Chin Kee* v. *Public Prosecutor*.[3] This report is not available to me. However, there is a head note about this case in *Mallal's* Digest of Malayan Case Law, 2nd edn., at column 257 paragraph 1334. It reads:—

"Duplicity of charge is an irregularity not an illegality and is cured under section 419 of the Criminal Procedure Code, 1926 (now Cap. 6, section 422), provided that such irregularity has occasioned no failure of justice. The knowledge of a person charged with an offence under section 111(f) of the Customs Enactment, 1932 (now Customs Enactment, 1936, section 114(i)(f), can generally only be deducted from his conduct but the conduct of the defence may also be considered."

The learned stipendiary magistrate had commented on that case and I have nothing to add.

It was suggested that "driving" refers to vehicle mechanically propelled. Whereas the word "propelling" refers to motion caused by physical propulsion rather than mechanical propulsion e.g. riding a bicycle or tricycle. The propulsion of a bicycle by a person seated on, and carried by it is "driving a carriage" within the meaning of the penal clause of the Highway Act 1835 — *Taylor* v. *Goodwin*.[4] According to the *Shorter Oxford* Dictionary the word "drive" also means (a) to cause to move along; (b) to propel, carry along. Turning to the word "propel" it also gives these meanings (a) to drive forward or onward; (b) to impart an onward motion to. Both words "driving" and "propelling" indicate motion — the act of moving along. For myself I consider that if more thought was given to framing the charge the word "drive" could have been used instead of using "driving or propelling".

There was nothing to indicate that appellant did not know for what offence he was charged in court. No objection was taken as to the charge at the trial. He was before the court because it was alleged that he failed to stop his car at the junction of Race Course Road and Queensway in compliance with a "Stop At Major Road Ahead" traffic sign. There is no duplicity in the present case. The words "or propelling" seem to be pure surplusage. Even if there is any irregularity it is curable under section 331 of the Criminal Procedure Code as such irregularity has not occasioned a failure of justice. The learned stipendiary magistrate was right to dismiss this ground.

The second ground in effect turns on question of fact. The learned stipendiary magistrate stated and I agree that the trial magistrate had a very clear cut decision to make on pure question of fact. The trial magistrate had the advantage of seeing and hearing the witnesses therefore he was in a much better position to assess their credibilities. The stipendiary magistrate very properly refused to interfere with the decision of the trial magistrate under such circumstances. As the judgment of the trial magistrate is very brief it is not easy to fathom his mind. The learned stipendiary magistrate was merely trying his best to probe the reasoning of the trial magistrate as to why he did not believe the story of the appellant. His judgment might be brief but the trial magistrate did indicate his satisfaction of the guilt of the appellant. He considered the police witness to be telling the truth and that appellant was lying when the latter said he did stop his car. The appellant has failed to show to the satisfaction of the court that the judgment of the trial magistrate was wrong in law or unreasonable or could not be supported having regard to the evidence or would result in a miscarriage of justice.

The two grounds of appeal failed and the appeal was dismissed accordingly.

Appeal dismissed.